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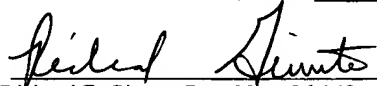
DOCKET NO.: E0295.70100US00

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Edgar St. Pierre et al.  
Serial No.: 09/342,453  
Confirmation No.: 6555  
Filed: June 29, 1999  
For: METHOD AND APPARATUS FOR DUPLICATING BACKUP DATA  
  
Examiner: Thai, Tuan V.  
Art Unit: 2186

CERTIFICATE OF MAILING UNDER 37 C.F.R. §1.8(a)

The undersigned hereby certifies that this document is being placed in the United States mail with first-class postage attached, addressed to Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on the 6<sup>th</sup> day of January, 2005.

  
Richard F. Giunta, Reg. No. : 36,149

Commissioner For Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

Transmitted herewith are the following documents:

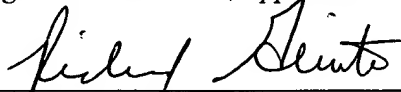
- Request for Reconsideration
- Return Receipt Postcard

If the enclosed papers are considered incomplete, the Mail Room and/or the Application Branch is respectfully requested to contact the undersigned at (617) 646-8000, Boston, Massachusetts.

A check is not enclosed. If a fee is required, the Commissioner is hereby authorized to charge Deposit Account No. 23/2825. A duplicate of this sheet is enclosed.

Respectfully submitted,  
*Edgar St. Pierre et al., Applicant*

By:

  
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Docket No.: E0295.70100US00  
Date: 01/06/05  
x01/06/05x



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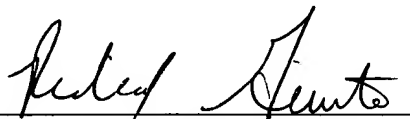
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The undersigned hereby certifies that this document is being placed in the United States mail with first-class postage attached, addressed to Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on the 10 day of January 2005.

  
Richard F. Giunta, Reg. No. 36,149

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Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

**REQUEST FOR RECONSIDERATION**

Sir:

In response to the Office Action mailed October 6, 2004, Applicants respectfully request reconsideration. To further the prosecution of this application, each of the rejections set forth in the Office Action has been carefully considered and is addressed below. The claims as pending are believed to be in allowable condition.

Initially, Applicants acknowledge the statement in the Office Action regretting the inconvenience caused by withdrawing the previous rejections at this late date (following numerous office action responses and telephone interviews wherein Applicants sought to overcome the prior rejection and avoid the necessity of filing an appeal). As discussed in more detail below, while a new rejection has been made, the substance of the prior art relied upon is no different than has been pending in this case from the beginning, as the Examiner rejects all of the claims over the admitted prior art relating to duplicating backup data in view of the well known concept of incremental backups in the creation of backup data.

The undersigned requests that if the Examiner is not persuaded that the claims patentably distinguish over the prior art after reading this response, that he contact the undersigned to have a further discussion to see whether agreement can be reached on that issue. If agreement cannot be reached, Applicants will refile an appeal and request that the Examiner allow it to go forward so that closure can be reached on this application at the Board level.

### The Rejections Under §103

In ¶5, claims 1-5, 7-11, 13-18, 20-23, 25-28, 30-34 and 36-38 are rejected under 35 U.S.C. §103 as purportedly being obvious over the admitted prior art described in the specification (referred to in the Office Action and herein as “AAPA”) in view of Saxon. This rejection is respectfully traversed.

The AAPA relates to systems that duplicate backup data using a process known as media duplication whereby an exact copy of a backup storage medium is made onto a corresponding duplicate backup storage medium. (specification, page 1, lines 3-16). The media duplication process duplicates a backup medium by sequentially reading raw backup data from the medium as a raw byte input stream and sequentially writing the backup data onto a corresponding duplicate backup storage medium as a raw byte output stream, with each byte in the raw byte input stream being written to the raw byte output stream. (specification, page 4, lines 19-23).

The Office Action concedes that the AAPA does not teach copying or backing up only a subset of backup data from at least one backup storage medium onto a duplicate backup storage medium.

However, the Office Action asserts that “partial backup is notorious old and well known in the memory storage art” (page 3). Applicants respectfully traverses any assertion that there is well known prior art that would have motivated one of skill in the art to modify the AAPA to copy only a subset of the backup data from a backup medium, and respectfully request that after the lengthy prosecution of this case, any rejections be limited to prior art of record that can be tangibly addressed.

The Office Action further asserts that:

... it would have been obvious to one having ordinary skill in the art at the time the current invention was made to implement the partial backup as being taught by Saxon for that of AAPA's current invention wherein only a subset of data being backed-up instead of full backup which is known as time-consuming and tends to monopolize the CPU for a lengthy period of time. In doing so, it would reduce the CPU operational time, and allow it to process additional tasks/instructions therefore enhancing system throughput; in addition, it would further reduce bus utilization that is required if full duplication/backup would have been utilized, therefore being advantageous. (Office Action, page 4).

Applicants respectfully disagree. The teachings of Saxon simply are irrelevant to the copying of backup data from a backup medium, because as admitted in the Office Action, Saxon is related solely to the *production* of backup data, and provides no teaching whatsoever with respect to *copying* of backup data.

Saxon refers to two types of partial backups - one relating to a backup wherein "only some files are copied" and the other being an incremental backup wherein only changes that have occurred since the last full or incremental backup are backed up (col. 1, lines 33-37). Neither of these (or any other) types of partial backups for the *creation* of backup data has any applicability whatsoever to the process of *copying* backup data. Thus, one of ordinary skill in the art would have not been motivated by any teaching in Saxon to modify the AAPA in any way.

More particularly, a partial backup wherein only certain files are copied necessarily results from a determination that some files are not sufficiently important to warrant them being backed up. The Office Action does not explain how such a teaching is at all relevant to a process of copying backup information that has already been determined to be of sufficient importance to warrant being backed up. Applicants respectfully assert that the teaching in Saxon that some partial backups can be made because some files do not warrant being backed up is simply irrelevant to the backup data duplication process disclosed by AAPA, so that one of ordinary

skill in the art would not have been motivated to modify the AAPA in any respect based upon the teachings of Saxon.

With respect to an incremental backup, as discussed in prior communications in this application, an incremental backup is one wherein backup data is created to include only data that has changed subsequent to the performance of a previous incremental or full backup. Thus, the selection process of backing up only some data is made based upon a very clear selection criterion, i.e., what data has changed. In the backup data duplication process of AAPA, the entire backed up data set is static - there is simply no data that changes over time. Thus, the teachings of an incremental backup are simply irrelevant to a backup duplication process.

As should be appreciated from the foregoing, the teachings of Saxon provide absolutely no motivation for selecting any particular backup data to be duplicated, while leaving some backup data unduplicated. For this additional reason, the teachings of Saxon would not have motivated one of skill in the art to modify the AAPA in any way.

In addition, the AAPA system is (as shown in Fig. 1) one in which the copying of backup data is performed by a backup server 20 that implements solely a media duplication process 36 that reads data from a backup medium as a raw byte stream. Thus, the backup server 20 is simply incapable of performing any copying of backup data other than a complete media duplication process, and there is nothing in the teachings of Saxon that relate to the creation of backup data that would have motivated one of skill in the art to modify the backup server 20 or to teach one of ordinary skill in the art how to modify the backup server 20 so that it can copy less than all of the backup data.

#### Conclusion


In view of the foregoing, it is respectfully asserted that the rejection of all the claims under §103 as purportedly being obvious over the combination of AAPA and Saxon is without any proper motivation in the prior art of record, such that the rejection should be withdrawn. As a result, it is believed that the claims patentably distinguish over the prior art of record and are in condition for allowance. A notice to this effect is respectfully requested.

If after considering this response the Examiner does not believe that the application is in condition for allowance, he is respectfully requested to contact the undersigned at the number listed below to reach closure on whether an appeal will be necessary.

If this response is not considered timely filed and if a request for an extension of time is otherwise absent, Applicants hereby request any necessary extension of time. If there is a fee occasioned by this response, including an extension fee, that is not covered by an enclosed check, please charge any deficiency to Deposit Account No. 23/2825.

Respectfully submitted,

*Edgar St. Pierre et al., Applicants*

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Docket No. E0295.70100US00  
Date: January 6, 2005  
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